

Martin R. Lueck (MN Bar No.155548)
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
Telephone: 612-349-8500
Facsimile: 612-339-4181
E-mail: mrlueck@rkmc.com

Elizabeth D. Le (CA Bar No. 216182)
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
2049 Century Park East, Suite 3400
Los Angeles, CA 90067-3208
Telephone: 310-552-0130
Facsimile: 310-229-5800
E-mail: edle@rkmc.com

Atorneys for Counterclaim Respondent
CARLSON MARKETING WORLDWIDE, INC.,
f/k/a CARLSON MARKETING GROUP, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VISA U.S.A. INC.,

Plaintiff,

**MARITZ, INC., d/b/a MARITZ
LOYALTY MARKETING**

Defendant.

Case No. CV 07-05585 JSW

[Assigned to the Hon. Jeffrey S. White]

**ANSWER OF COUNTERCLAIM
RESPONDENT CARLSON MARKETING
WORLDWIDE, INC., F/K/A CARLSON
MARKETING GROUP, INC., TO
COUNTERCLAIM; DEMAND FOR JURY
TRIAL**

MARITZ, INC., d/b/a MARITZ
LOYALTY MARKETING,

Counterclaimant,

**VISA U.S.A. INC. and CARLSON
MARKETING GROUP, INC.**

Counterclaim Respondents.

1 In response to the Counterclaim filed by Maritz, Inc. (“Maritz”), Counterclaim
2 Respondent CARLSON MARKETING WORLDWIDE, INC. (“CMW”), formerly known as
3 Carlson Marketing Group, Inc., and erroneously sued as “Carlson Marketing Group, Inc.” hereby
4 answers, avers and pleads as follows:

INTRODUCTION

6 1. Answering Paragraph 1 of the Counterclaim, CMW is without sufficient
7 knowledge or information to form belief as to the truth of the allegations contained in said
8 paragraph, and on that basis denies each and every allegation contained therein. CMW is not a
9 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
10 action arises.

11 2. Answering Paragraph 2 of the Counterclaim, CMW denies each and every
12 allegation contained therein.

13 3. Answering Paragraph 3 of the Counterclaim, CMW denies each and every
14 allegation contained therein. CMW is not a party to the contract(s) between Visa and Maritz from
15 which this dispute and the underlying action arises.

PARTIES

17 4. Answering Paragraph 4 of the Counterclaim, CMW admits all the allegations
18 therein.

19 5. Answering Paragraph 5 of the Counterclaim, CMW is without sufficient
20 knowledge or information to form belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein.

22 6. Answering Paragraph 6 of the Counterclaim, CMW admits all the allegations
23 therein.

24 7. Answering Paragraph 7 of the Counterclaim, CMW admits all the allegations
25 therein.

26 8. Answering Paragraph 8 of the Counterclaim, CMW admits that it is a New Jersey
27 corporation having its principal place of business in Minnesota. CMW admits that it engages in
28 the business of (among other things) providing and managing incentive reward programs and

1 services, including customer loyalty programs. CMW admits that it is a direct competitor of
2 Maritz. Except as so admitted, CMW denies all other allegations contained in Paragraph 8.

3 **JURISDICTION AND VENUE**

4 9. Answering Paragraph 9 of the Counterclaim, CMW admits all the allegations
5 therein.

6 10. Answering Paragraph 10 of the Counterclaim, CMW admits all the allegations
7 therein.

8 **BACKGROUND**

9 11. Answering Paragraph 11 of the Counterclaim, CMW is without sufficient
10 knowledge or information to form belief as to the truth of the allegations contained in said
11 paragraph, and on that basis denies each and every allegation contained therein. CMW is not a
12 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
13 action arises.

14 12. Answering Paragraph 12 of the Counterclaim, CMW admits the allegation that
15 CMW was operating and maintaining Visa's Rewards Program in April 2006. CMW admits that
16 it engages in the business of (among other things) providing and managing incentive reward
17 programs and services, including customer loyalty programs. Except as so admitted, CMW
18 denies all other allegations contained in Paragraph 12.

19 13. Answering Paragraph 13 of the Counterclaim, CMW is without sufficient
20 knowledge or information to form belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein. CMW is not a
22 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
23 action arises.

24 14. Answering Paragraph 14 of the Counterclaim, CMW is without sufficient
25 knowledge or information to form belief as to the truth of the allegations contained in said
26 paragraph, and on that basis denies each and every allegation contained therein. CMW is not a
27 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
28 action arises.

1 15. Answering Paragraph 15 of the Counterclaim, CMW is without sufficient
2 knowledge or information to form belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein. CMW is not a
4 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
5 action arises.

6 16. Answering Paragraph 16 of the Counterclaim, CMW is without sufficient
7 knowledge or information to form belief as to the truth of the allegations contained in said
8 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
9 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
10 action arises.

11 (a) Answering Paragraph 16(a) of the Counterclaim, CMW is without
12 sufficient knowledge or information to form belief as to the truth of the
13 allegations contained in said paragraph, and on that basis denies each and
14 every allegation contained therein. CMW was not a party to the contract(s)
15 between Visa and Maritz from which this dispute and the underlying action
16 arises.

17 (b) Answering Paragraph 16(b) of the Counterclaim, CMW is without
18 sufficient knowledge or information to form belief as to the truth of the
19 allegations contained in said paragraph, and on that basis denies each and
20 every allegation contained therein. CMW was not a party to the contract(s)
21 between Visa and Maritz from which this dispute and the underlying action
22 arises.

23 (c) Answering Paragraph 16(c) of the Counterclaim, CMW is without
24 sufficient knowledge or information to form belief as to the truth of the
25 allegations contained in said paragraph, and on that basis denies each and
26 every allegation contained therein. CMW was not a party to the contract(s)
27 between Visa and Maritz from which this dispute and the underlying action
28 arises.

1 (d) Answering Paragraph 16(d) of the Counterclaim, CMW is without
2 sufficient knowledge or information to form belief as to the truth of the
3 allegations contained in said paragraph, and on that basis denies each and
4 every allegation contained therein. CMW was not a party to the contract(s)
5 between Visa and Maritz from which this dispute and the underlying action
6 arises.

7 17. Answering Paragraph 17 of the Counterclaim, CMW is without sufficient
8 knowledge or information to form belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
10 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
11 action arises.

12 18. Answering Paragraph 18 of the Counterclaim, CMW admits that it had an
13 agreement with Visa to assist Visa, upon Visa's reasonable requests, with the transition services
14 of the Program and various files needed by Visa, subject to, among other things, CMW's
15 intellectual property rights, confidential and proprietary trade secrets information. CMW denies
16 that Maritz was an intended beneficiary under any agreement(s) between CMW and Visa.

17 19. Answering Paragraph 19 of the Counterclaim, CMW denies the allegation that it
18 "knew [] that the information and files Carlson was supposed to provide were needed by Maritz
19 with respect to the Rewards Program project." With respect to all other allegations contained in
20 Paragraph 19, CMW is without sufficient knowledge or information to form belief as to the truth
21 of said allegations, and on that basis denies them. CMW was not a party to the contract(s)
22 between Visa and Maritz from which this dispute and the underlying action arises.

23 20. Answering Paragraph 20 of the Counterclaim, CMW is without sufficient
24 knowledge or information to form belief as to the truth of the allegations contained in said
25 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
26 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
27 action arises.

1 21. Answering Paragraph 21 of the Counterclaim, CMW is without sufficient
2 knowledge or information to form belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
4 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
5 action arises.

6 22. Answering Paragraph 22 of the Counterclaim, CMW denies each and every
7 allegation contained therein.

8 23. Answering Paragraph 23 of the Counterclaim, CMW is without sufficient
9 knowledge or information to form belief as to the truth of the allegations contained in said
10 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
11 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
12 action arises.

13 24. Answering Paragraph 24 of the Counterclaim, CMW denies each and every
14 allegation contained therein.

15 25. Answering Paragraph 25 of the Counterclaim, CMW denies the allegation that
16 CMW caused any delay or hindrance to "Maritz's performance of its obligations under the
17 Agreement." CMW denies the allegation that it failed to provide information in a timely fashion
18 or that it provided inaccurate, incomplete or corrupt files or information. With respect to all other
19 allegations contained in Paragraph 25, CMW is without sufficient knowledge or information to
20 form belief as to the truth of said allegations, and on that basis denies them. CMW was not a
21 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
22 action arises.

23 26. Answering Paragraph 26 of the Counterclaim, CMW denies each and every
24 allegation contained therein.

25 27. Answering Paragraph 27 of the Counterclaim, CMW denies the allegation that it
26 "fail[ed] to provide timely, complete, accurate and uncorrupted information and files." CMW
27 denies the allegation that it "hindered [or] delayed...Maritz's performance of certain of its
28 obligations under the Agreement and caused Maritz to incur substantial costs and expenses."

1 With respect to all other allegations contained in Paragraph 27, CMW is without sufficient
2 knowledge or information to form belief as to the truth of said allegations, and on that basis
3 denies them. CMW was not a party to the contract(s) between Visa and Maritz from which this
4 dispute and the underlying action arises.

5 (a) Answering Paragraph 27(a) of the Counterclaim, CMW denies the
6 allegation that "Visa's failures were caused at least in part by Carlson's
7 failure to provide the necessary information." As to all remaining
8 allegations contained in Paragraph 27(a), CMW is without sufficient
9 knowledge or information to form belief as to the truth of said allegations
10 and on that basis denies them. CMW was not a party to the contract(s)
11 between Visa and Maritz from which this dispute and the underlying action
12 arises.

13 (b) Answering Paragraph 27(b) of the Counterclaim, CMW denies the
14 allegation that "Visa's failure to provide complete and current Content
15 Guides to Maritz in a timely fashion were caused in part by Carlson." As
16 to all remaining allegations contained in Paragraph 27(b), CMW is without
17 sufficient knowledge or information to form belief as to the truth of said
18 allegations and on that basis denies them.

19 (c) Answering Paragraph 27(c) of the Counterclaim, CMW denies the
20 allegation that it caused any "fail[ure] to provide Maritz with the complete
21 and correct final conversion requirements in a timely fashion." As to all
22 remaining allegations contained in Paragraph 27(c), CMW is without
23 sufficient knowledge or information to form belief as to the truth of said
24 allegations and on that basis denies them.

25 (d) Answering Paragraph 27(d) of the Counterclaim, CMW denies the
26 allegation that it caused "Visa [to] twice missed deadlines for delivering
27 the first set of files to Maritz for conversion ('the Mock Conversion
28 Files')...[i]n late July and early August of 2006." As to all remaining

allegations contained in Paragraph 27(d), CMW is without sufficient knowledge or information to form belief as to the truth of said allegations and on that basis denies them.

- (e) Answering Paragraph 27(e) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- (f) Answering Paragraph 27(f) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- (g) Answering Paragraph 27(g) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- (h) Answering Paragraph 27(h) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein. CMW was not a party to the contract(s) between Visa and Maritz from which this dispute and the underlying action arises.
- (i) Answering Paragraph 27(i) of the Counterclaim, CMW denies the allegation that Carlson caused “Visa [to] often provide[] Maritz – both directly and also indirectly through Carlson and/or the Visa member financial institutions – with files and information containing the wrong sequence numbers.” As to all remaining allegations contained in Paragraph 27(i), CMW is without sufficient knowledge or information to form belief as to the truth of said allegations and on that basis denies them.

1 (j) Answering Paragraph 27(j) of the Counterclaim, CMW is without
2 sufficient knowledge or information to form belief as to the truth of the
3 allegations contained in said paragraph, and on that basis denies each and
4 every allegation contained therein.

5 (k) Answering Paragraph 27(k) of the Counterclaim, CMW denies the
6 allegation that it “provided Maritz with information and files containing
7 various mistakes, defects and problems.” CMW denies that it provided
8 Maritz with parameter files that contained duplicate entries for the same
9 account range. CMW further denies the allegation that “the information
10 provided to Maritz with respect to the issuer non-group parameters was not
11 sufficient to enable Maritz to configure the parameters properly.” As to all
12 remaining allegations contained in Paragraph 27(k), CMW is without
13 sufficient knowledge or information to form belief as to the truth of said
14 allegations and on that basis denies them.

15 (l) Answering Paragraph 27(l) of the Counterclaim, CMW denies that the
16 allegation that “[d]uring the November 2006 conversion process, thousands
17 of the accounts that Maritz received from Carlson were in an inactive
18 account range that had not been supplied to Maritz...resulted from errors
19 caused by ...Carlson.” As to all remaining allegations contained in
20 Paragraph 27(l), CMW is without sufficient knowledge or information to
21 form belief as to the truth of said allegations and on that basis denies them.

22 (m) Answering Paragraph 27(m) of the Counterclaim, CMW denies that it
23 provided Maritz with corrupt files from MoveIt in November 2006. As to
24 all remaining allegations contained in Paragraph 27(m), CMW is without
25 sufficient knowledge or information to form belief as to the truth of said
26 allegations and on that basis denies them.

27 (n) Answering Paragraph 27(n) of the Counterclaim, CMW is without
28 sufficient knowledge or information to form belief as to the truth of the

allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

- (o) Answering Paragraph 27(o) of the Counterclaim, CMW denies each and every allegation contained therein.
- (p) Answering Paragraph 27(p) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- (q) Answering Paragraph 27(q) of the Counterclaim, CMW denies each and every allegation contained therein.
- (r) Answering Paragraph 27(r) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- (s) Answering Paragraph 27(s) of the Counterclaim, CMW is without sufficient knowledge or information to form belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

19 28. Answering Paragraph 28 of the Counterclaim, CMW is without sufficient
20 knowledge or information to form belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
22 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
23 action arises.

24 29. Answering Paragraph 29 of the Counterclaim, CMW is without sufficient
25 knowledge or information to form belief as to the truth of the allegations contained in said
26 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
27 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
28 action arises.

1 30. Answering Paragraph 30 of the Counterclaim, CMW is without sufficient
2 knowledge or information to form belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
4 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
5 action arises.

6 31. Answering Paragraph 31 of the Counterclaim, CMW is without sufficient
7 knowledge or information to form belief as to the truth of the allegations contained in said
8 paragraph, and on that basis denies each and every allegation contained therein.

9 32. Answering Paragraph 32 of the Counterclaim, CMW is without sufficient
10 knowledge or information to form belief as to the truth of the allegations contained in said
11 paragraph, and on that basis denies each and every allegation contained therein.

12 33. Answering Paragraph 33 of the Counterclaim, CMW is without sufficient
13 knowledge or information to form belief as to the truth of the allegations contained in said
14 paragraph, and on that basis denies each and every allegation contained therein.

15 34. Answering Paragraph 34 of the Counterclaim, CMW denies the allegation
16 contained therein that it “fail[ed] to provide timely, complete and accurate information.” CMW
17 denies any allegation contained in Paragraph 34 that CMW somehow “impacted Maritz’s efforts
18 to meet the target launch dates in 2006” or that CMW somehow “impeded Maritz’s
19 performance.” As to all other allegations contained in Paragraph 34, CMW is without sufficient
20 knowledge or information to form belief as to their truth of the allegations, and on that basis
21 denies each and every allegation contained therein.

22 35. Answering Paragraph 35 of the Counterclaim, CMW is without sufficient
23 knowledge or information to form belief as to the truth of the allegations contained in said
24 paragraph, and on that basis denies each and every allegation contained therein.

25 36. Answering Paragraph 36 of the Counterclaim, CMW is without sufficient
26 knowledge or information to form belief as to the truth of the allegations contained in said
27 paragraph, and on that basis denies each and every allegation contained therein.

1 37. Answering Paragraph 37 of the Counterclaim, CMW is without sufficient
2 knowledge or information to form belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein.

4 38. Answering Paragraph 38 of the Counterclaim, CMW is without sufficient
5 knowledge or information to form belief as to the truth of the allegations contained in said
6 paragraph, and on that basis denies each and every allegation contained therein.

7 39. Answering Paragraph 39 of the Counterclaim, CMW is without sufficient
8 knowledge or information to form belief as to the truth of the allegations contained in said
9 paragraph, and on that basis denies each and every allegation contained therein.

10 40. Answering Paragraph 40 of the Counterclaim, CMW is without sufficient
11 knowledge or information to form belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein.

13 41. Answering Paragraph 41 of the Counterclaim, CMW is without sufficient
14 knowledge or information to form belief as to the truth of the allegations contained in said
15 paragraph, and on that basis denies each and every allegation contained therein.

16 42. Answering Paragraph 42 of the Counterclaim, CMW is without sufficient
17 knowledge or information to form belief as to the truth of the allegations contained in said
18 paragraph, and on that basis denies each and every allegation contained therein.

19 43. Answering Paragraph 43 of the Counterclaim, CMW is without sufficient
20 knowledge or information to form belief as to the truth of the allegations contained in said
21 paragraph, and on that basis denies each and every allegation contained therein.

22 44. Answering Paragraph 44 of the Counterclaim, CMW is without sufficient
23 knowledge or information to form belief as to the truth of the allegations contained in said
24 paragraph, and on that basis denies each and every allegation contained therein.

25 45. Answering Paragraph 45 of the Counterclaim, CMW is without sufficient
26 knowledge or information to form belief as to the truth of the allegations contained in said
27 paragraph, and on that basis denies each and every allegation contained therein.

1 46. Answering Paragraph 46 of the Counterclaim, CMW denies the allegation that it
2 "caused [any of the] problems described above." With respect to the remaining allegations in
3 Paragraph 46, CMW is without sufficient knowledge or information to form belief as to their
4 truth and on that basis denies said allegations.

5 47. Answering Paragraph 47 of the Counterclaim, CMW admits that Visa had CMW
6 restart the website in December 2006 after Maritz failed to launch the site during the busy holiday
7 season. Except as so admitted, CMW is without sufficient knowledge or information to form
8 belief as to the truth of the other allegations contained in said paragraph, and on that basis denies
9 them.

10 48. Answering Paragraph 48 of the Counterclaim, CMW is without sufficient
11 knowledge or information to form belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
13 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
14 action arises.

15 49. Answering Paragraph 49 of the Counterclaim, CMW is without sufficient
16 knowledge or information to form belief as to the truth of the allegations contained in said
17 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
18 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
19 action arises.

20 50. Answering Paragraph 50 of the Counterclaim, CMW is without sufficient
21 knowledge or information to form belief as to the truth of the allegations contained in said
22 paragraph, and on that basis denies each and every allegation contained therein.

23 51. Answering Paragraph 51 of the Counterclaim, CMW is without sufficient
24 knowledge or information to form belief as to the truth of the allegations contained in said
25 paragraph, and on that basis denies each and every allegation contained therein.

26 52. Answering Paragraph 52 of the Counterclaim, CMW is without sufficient
27 knowledge or information to form belief as to the truth of the allegations contained in said
28 paragraph, and on that basis denies each and every allegation contained therein.

1 53. Answering Paragraph 53 of the Counterclaim, CMW is without sufficient
2 knowledge or information to form belief as to the truth of the allegations contained in said
3 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
4 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
5 action arises.

6 54. Answering Paragraph 54 of the Counterclaim, CMW is without sufficient
7 knowledge or information to form belief as to the truth of the allegations contained in said
8 paragraph, and on that basis denies each and every allegation contained therein.

9 55. Answering Paragraph 55 of the Counterclaim, CMW denies each and every
10 allegation contained therein.

11 56. Answering Paragraph 56 of the Counterclaim, CMW denies each and every
12 allegation contained therein.

13 57. Answering Paragraph 57 of the Counterclaim, CMW denies the allegation that it
14 caused any of “the problems” alleged. With respect to all other allegations contained in
15 Paragraph 57, CMW is without sufficient knowledge or information to form belief as to the truth
16 of the allegations contained in said paragraph, and on that basis denies each and every allegation
17 contained therein.

18 58. Answering Paragraph 58 of the Counterclaim, CMW is without sufficient
19 knowledge or information to form belief as to the truth of the allegations contained in said
20 paragraph, and on that basis denies each and every allegation contained therein.

21 59. Answering Paragraph 59 of the Counterclaim, CMW is without sufficient
22 knowledge or information to form belief as to the truth of the allegations contained in said
23 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
24 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
25 action arises.

26 60. Answering Paragraph 60 of the Counterclaim, CMW is without sufficient
27 knowledge or information to form belief as to the truth of the allegations contained in said
28 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a

1 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
2 action arises.

3 61. Answering Paragraph 61 of the Counterclaim, CMW is without sufficient
4 knowledge or information to form belief as to the truth of the allegations contained in said
5 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
6 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
7 action arises.

8 62. Answering Paragraph 62 of the Counterclaim, CMW is without sufficient
9 knowledge or information to form belief as to the truth of the allegations contained in said
10 paragraph, and on that basis denies each and every allegation contained therein.

11 63. Answering Paragraph 63 of the Counterclaim, CMW denies each and every
12 allegation contained therein.

13 64. Answering Paragraph 64 of the Counterclaim, CMW is without sufficient
14 knowledge or information to form belief as to the truth of the allegations contained in said
15 paragraph, and on that basis denies each and every allegation contained therein.

16 65. Answering Paragraph 65 of the Counterclaim, CMW is without sufficient
17 knowledge or information to form belief as to the truth of the allegations contained in said
18 paragraph, and on that basis denies each and every allegation contained therein.

19 66. Answering Paragraph 66 of the Counterclaim, CMW denies the allegation that
20 “the delays, problems, failures and any related damages allegedly incurred by Visa were caused
21 by...Carlson.” With respect to all other allegations contained in Paragraph 66, CMW is without
22 sufficient knowledge or information to form belief as to the truth of these allegations, and on that
23 basis denies them.

24 67. Answering Paragraph 67 of the Counterclaim, CMW is without sufficient
25 knowledge or information to form belief as to the truth of the allegations contained in said
26 paragraph, and on that basis denies each and every allegation contained therein.

27 68. Answering Paragraph 68 of the Counterclaim, CMW is without sufficient
28 knowledge or information to form belief as to the truth of the allegations contained in said

1 paragraph, and on that basis denies each and every allegation contained therein. CMW was not a
 2 party to the contract(s) between Visa and Maritz from which this dispute and the underlying
 3 action arises.

4 **COUNT VII**

5 **(Breach of Contract; Third Party Beneficiary)**

6 69. Answering Paragraph 134 of the Counterclaim, CMW incorporates its responses
 7 and denials asserted in Paragraphs 1 through 68 above as though fully set forth herein.

8 70. Answering Paragraph 135 of the Counterclaim, CMW denies each and every
 9 allegation contained therein. In addition, CMW denies that Maritz is entitled to the relief
 10 requested in Paragraph 135 at page 39, lines 20 through 25, or any other relief.

11 **COUNT VIII**

12 **(Contribution)**

13 71. Answering Paragraph 136 of the Counterclaim, CMW incorporates its responses
 14 and denials asserted in Paragraphs 1 through 68 above as though fully set forth herein.

15 72. Answering Paragraph 137 of the Counterclaim, CMW is without sufficient
 16 knowledge or information to form belief as to the truth of the allegations contained in said
 17 paragraph, and on that basis denies each and every allegation contained therein.

18 73. Answering Paragraph 138 of the Counterclaim, CMW denies each and every
 19 allegation contained therein.

20 74. Answering Paragraph 139 of the Counterclaim, CMW denies each and every
 21 allegation contained therein.

22 75. Answering Paragraph 140 of the Counterclaim, CMW denies each and every
 23 allegation contained therein.

24 76. Answering Paragraph 141 of the Counterclaim, CMW denies each and every
 25 allegation contained therein. In addition, CMW denies that Maritz is entitled to the relief
 26 requested in Paragraph 141 at page 40, line 23 through page 41, line 4, or any other relief.

27 77. CMW denies each and every allegation that is not expressly admitted herein.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses, and without admitting any of Counterclaim Respondent's allegations or conceding the burden of proof as to any issue found to be an element of any of Counterclaim Respondent's causes of action rather than an affirmative defense, CMW alleges the following separate and independent affirmative defenses:

FIRST AFFIRMATIVE DEFENSE**(Failure to State a Claim)**

1. The Counterclaim, and each purported cause of action therein, fails to set forth sufficient facts to state a claim or cause of action upon which relief may be granted against CMW.

SECOND AFFIRMATIVE DEFENSE**(Lack of Standing)**

2. The Counterclaim, in whole or in part, is barred because Maritz lacks standing in which to assert any claims against CMW.

THIRD AFFIRMATIVE DEFENSE**(Statute of Limitations)**

3. Each of the purported causes of action set forth in the Counterclaim against CMW is barred in whole or in part by the applicable statutes of limitations.

FOURTH AFFIRMATIVE DEFENSE**(Estoppel)**

4. All the purported causes of action against CMW are barred in whole or in part by the doctrine of estoppel by reason of the conduct and actions of Maritz.

FIFTH AFFIRMATIVE DEFENSE**(Comparative Fault)**

5. Maritz's alleged damages, if any, were proximately caused by Maritz's own acts, omissions, negligence, neglect or other wrongful acts and Maritz is thereby barred from recovery thereon, or in the alternative, Maritz's alleged damages, if any, must be reduced by the amount or percentage of its own contributory or comparative negligence, wrongful acts or omissions.

SIXTH AFFIRMATIVE DEFENSE**(Superseding/Intervening Cause)**

6. Maritz's claims are barred, in whole or in part, to the extent that any injury or
 4 damage sustained by Maritz (which CMW denies were sustained), said injury or damage was
 5 caused in whole or in part by the conduct, negligent acts or omissions, and/or fault of Maritz or
 6 others over whom CMW has no control, which conduct, acts or omissions, or fault were the
 7 proximate cause or intervening or superseding causes of any injury or damage to Maritz.

SEVENTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

7. Maritz's recovery, if any, should be precluded and reduced to the extent that any
 11 such damages could have been avoided by reasonable efforts on their part to mitigate the same,
 12 and to the extent that the failure of Plaintiff and/or purported members of the putative class to use
 13 reasonable care to reduce, minimize, or otherwise mitigate their alleged damages.

EIGHTH AFFIRMATIVE DEFENSE**(Waiver)**

8. Maritz's claims against CMW are barred in whole or in part by waiver by reason
 17 of Maritz's conduct and actions.

NINTH AFFIRMATIVE DEFENSE**(Reservation of Other Affirmative Defenses)**

9. CMW expressly and specifically reserves the right to amend this answer to add,
 21 delete and/or modify affirmative defenses based upon legal theories, facts, and circumstances
 22 which may or will be developed through discovery and/or through further legal analysis of
 23 CMW's position in this litigation.

PRAYER

WHEREFORE, CMW prays that Maritz takes nothing by reason of the Counterclaim, that
 26 its claims be dismissed with prejudice, that judgment be entered in favor of CMW as to all of
 27 Maritz's claims against CMW, and that CMW be awarded its costs and attorneys' fees in the
 28 matter and such other relief as the Court deems proper.

1 **DEMAND FOR JURY TRIAL**

2 CMW hereby demands a trial by jury on all issues triable to a jury.

3 DATED: February 19, 2008

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

4 By: /S/ Elizabeth D. Le

5 Martin R. Lueck

6 Elizabeth D. Le

7 *Attorneys for Counterclaim Respondent Carlson*
Marketing Worldwide, Inc., f/k/a Carlson
Marketing Group, Inc.

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ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
LOS ANGELES

CERTIFICATE OF SERVICE

1 Pursuant to 28 U.S.C. § 1746, I hereby certify that a copy of **ANSWER OF**
2 **COUNTERCLAIM RESPONDENT CARLSON MARKETING WORLDWIDE, INC.,**
3 **F/K/A CARLSON MARKETING GROUP, INC., TO COUNTERCLAIM; DEMAND FOR**
4 **JURY TRIAL** was served upon the parties below Fed. R. Civ. P. 5(b) by causing a copy of the
5 same to be placed in the United States Mail, postage prepaid, and sent to their last known address
6 as follows:

7
8
9 Ronald Stanley Katz, Esq.
10 Ryan S. Hilbert, Esq.
11 Manatt, Phelps & Phillips LLP
12 1001 Page Mill Road
13 Building 2
14 Palo Alto, CA 94304-1006
15 *Attorneys for Defendant and Counterclaimant Maritz, Inc., d/b/a Maritz Loyalty Marketing*

16
17 Roderick Manley Thompson, Esq.
18 Diego F. Acevedo, Esq.
19 Robert C. Holtzapple, Esq.
20 Farella Braun & Martel LLP
21 235 Montgomery Street, 30th Fl.
22 San Francisco, CA 94104
23 *Attorneys for Plaintiff and Counterclaim Respondent Visa U.S.A. Inc.*

24
25 Helen E. Dutton, Esq.
26 Farella Braun & Martel LLP
27 235 Montgomery Street, 17th Fl.
28 San Francisco, CA 94104
29 *Attorneys for Plaintiff and Counterclaim Respondent Visa U.S.A. Inc.*

30 Date: February 19, 2008

31 By: /S/ Elizabeth D. Le
32 ELIZABETH D. LE